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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/776,130 | 02/02/2001 | Dimitra G. Gerogianni | 020431.0739 | 9365 |

7590 04/20/2004

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EXAMINER

SAETHER, FLEMMING

| ART UNIT | PAPER NUMBER |
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3677

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|--|--|
| Office Action Summary | Application N . 09/776,130 | Applicant(s) GEROGIANNI, DIMITRA G. 26 | |
| | Examiner Flemming Saether | Art Unit 3679 | |

-- Th MAILING DATE f this communication appears on th cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 16-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13, 16-21, 23-34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409) and Harrington (US 5,895,454). Cupps discloses the general concept of brokering food orders over the Internet wherein a plurality of buyers have access to a database of a plurality of unaffiliated restaurants that deliver food (Fig. 1 and 7). Each of the buyers inputs their location and the broker displays restaurants that deliver to that location and indicates specials (Fig. 8). Each of the restaurants displays a menu of available food items and price (Fig. 9). Once an item is found, the buyer initiates a transaction and is given a response or confirmation from the restaurant which includes a delivery time (column 11, line 26-27). The delivery time is real time and inherently would include any backlog on the part of the seller since the seller is the one providing the delivery time (column 11, line 11-12). Cupps does not disclose the real time delivery time being provide prior to a selection be made by the customer. Hanson discloses a food order and delivery system wherein the real time delivery time, based at least in part on actual deliveries, is communicated to the customer as a transaction is being made (column 16, line 64-68) so the customer can take that into account prior to placing an order. At the time the invention was made, it would have been obvious for one of ordinary skill in the

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art to communicate the real time delivery time to the customer in Cupps prior to the order being placed so that the customer could make a more informed decision.

Modified Cupps does not disclose the real time delivery time communicated to the customer prior to a transaction being initiated. Harrington discloses a system using the internet where in addition to other criteria such as price etc... the delivery time is included to the customer in a hierarchical scheme, in other words rank, form a plurality of sellers for comparison to the customer so that a determination on purchasing an item can be based on the delivery time (column 5, lines 25-61). Harrington further teaches to provide alternatives to the customer if the criteria is not met (column 6, lines 4-9). At the time the invention was made, it would have been obvious for the person of ordinary skill in the art to communicate the real time delivery time to the customer in modified Cupps in a manner as disclosed in Harrington so that delivery time could be used by the customer as criteria for determining which food item to order before beginning any transaction.

Claims 12, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Hanson (US 4,971,409) and Harrington (US 5,895,454) as applied to claims 1, 13 and 24 above and further in view of Cotter (US 4,797,818). Cotter teaches the selection of a restaurant or seller for a delivery order automatically based on real time delivery time (column 2, line 2, line 21-31). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to

provide for the automatic selection of a seller in modified Cupps based on real time delivery time as disclosed in Cotter in order to save time to the customer.

Response to Remarks:

Even after careful review of applicant's remarks, the rejection was maintained for reasons as will be discussed below.

Applicant initially argues that there would be no motivation for the combination citing various case law and sections of the M.P.E.P. in support of the requirement that there must be motivation for the combination. In response, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Furthermore, as should be self evident from the above rejections, the examiner has not "merely stated that at the time the present invention was made it would have been obvious for one of ordinary skill in the art to combine the teachings of Cupps, Harrington, Hanson and Cotter" as suggested by applicant (page 16, lines 12-14). Applicant is referred back to the above rejections for the motivations and since applicant is not specific no, further response is believed necessary.

Applicant next argues that the references do not teach every limitation of the claims. In response, the examiner disagrees as will be discussed below but, beforehand applicant is reminded that the claims must be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

Applicant begins by arguing claims 1, 13 and 23-24. Specifically argues that Cupps only discloses a menu items for a given vendor and as such presumably would not teach "food items from a plurality of different vendors". In response, the examiner disagrees because Cupps discloses multiple unaffiliated vendors (108A-108M) each of which, or at least some of which, would display a menu with individual items thus individual food items would be displayed from unaffiliated vendors and meet the claimed limitation.

Applicant next argues that the examiner cannot rely on inherency for the real-time based at least in part on backlog. Specifically, applicant is of the opinion that because the seller (vendor) provides the real-time it would not inherently be inclusive of any backlog. In response, the examiner disagrees because as stated in the rejection and recognized by applicant, it is the seller who provides the expected delivery time and therefore in order to provide an expected delivery time it must include any backlog or else the expected delivery time would have no meaning. In other words, it is necessary for the seller to consider any backlog in order to provide an expected delivery time. For sake of argument, let's assume the seller did not consider the backlog and gave a

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delivery time, and now lets assume there is a backlog, the delivery time given by the seller would not be accurate and meaningless since the delivery would be delayed due to the backlog.

Applicant next argues that neither Cupps nor Harrington or a combination thereof discloses "real-time availability". In response, the examiner disagrees because as touched on above, since Cupps disclose the seller providing the delivery time it would be "real-time". Furthermore, Harrington provides for a delivery time based upon factors including location as therefore would also be considered "real-time". Applicant's argument regarding the hierarchical menus not including any type of comparison is not understood because, by definition, for something to be hierarchical it must include a comparison to determine the hierarchical order.

Applicant next argues claims 4-5, 27-28 and 36-37. Specifically, applicant argues that the examiner fails to point out where the prior art disclose the deliveries based on actual deliveries. In response, the examiner relies on Hanson to disclose the real time delivery time, based at least in part on actual deliveries, communicated to the customer as a transaction is being made. In the paragraph bridging columns 16 and 17, Hanson describes drivers making deliveries and then returning to the checkout station and takes note of "unusual delays in *future deliveries*" [emphasis added] which means there must have been a previous delivery which communicated the unusual delay.

Applicant next argues claims 6, 16 and 29 in that the prior art particularly Harrington fails to disclose to rank the sellers based on real-time delivery. In response, the examiner disagrees. The real-time delivery time has already been discussed above and since the delivery time is based on location (column 5, line 26-27) and the location would be part of a hierarchical scheme it would include some form of rank which in turn would mean that the delivery time would be ranked in some form.

Applicant next argues claims 8, 18 and 31 in that the prior art, in particular, Harrington does not disclose suggesting an alternative if a delivery time is beyond a threshold. In response, the examiner again disagrees. As noted in the rejection and recognized by applicant, Harrington allows for customer preferences in determining vendors and products. In that regard, the delivery time as based on location would be a preference as discussed above and in column 5, line 25-29 of Harrington and could be used to direct the customer. As a specific example disclosed in Harrington, the criteria being a delivery time of 3 days or less (column 5, line 26-27) would preclude some products or vendor sites which by doing so would suggest alternatives.

Lastly, applicant argues claims 9, 19 and 32 in that the prior art does not disclose real time availability based upon a shortage. In response, the examiner disagrees for reasons as set forth in the response to arguments regarding claim 1.

Conclusion

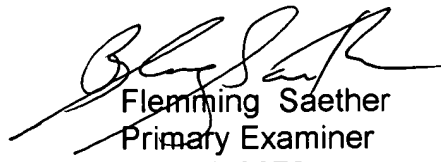
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Flemming Saether
Primary Examiner
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